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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 WILLIAM BENTON HENRY, an
11 individual,

12 Plaintiff,

13
14 v.

15 AIRBNB, INC., a Delaware corporation,
16 individually, and doing business as
17 "AIRBNB.COM"; and Does 1-10,
18 inclusive,

19 Defendants.
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Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT
3. VIOLATIONS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. §1202)

Jury Trial Demanded

1 Plaintiff, William Benton Henry (“HENRY”), by and through his undersigned
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff, HENRY, is an individual residing in South Carolina.

13 5. Plaintiff is informed and believes and thereon alleges that Defendant
14 AIRBNB, INC. is a Delaware corporation doing business as “AIRBNB.COM”
15 (collectively “AIRBNB”) that is registered to do business in the state of California
16 with an office located at 888 Brannan Street, San Francisco, CA 94103 and does
17 business in and with the state of California and this District. AIRBNB is the owner,
18 operator, and/or controller of the website www.airbnb.com and its related and
19 affiliated subdomains (collectively, “AIRBNB’s Platform”)

20 6. On information and belief, Plaintiff alleges that Defendants DOES 1
21 through 10 (collectively, “DOE Defendants”) (altogether with Airbnb,
22 “Defendants”) are other parties not yet identified who have infringed Plaintiff’s
23 copyrights, have contributed to the infringement of Plaintiff’s copyrights, or have
24 engaged in one or more of the wrongful practices alleged herein. The true names,
25 whether corporate, individual or otherwise, of DOE Defendants are presently
26 unknown to Plaintiff, who therefore sues said DOE Defendants by such fictitious
27 names, and will seek leave to amend this Complaint to show their true names and
28 capacities when same have been ascertained.

1 7. On information and belief, Plaintiff alleges that at all times relevant
2 hereto each of the Defendants was the agent, affiliate, officer, director, manager,
3 principal, alter-ego, and/or employee of the remaining Defendants and was at all
4 times acting within the scope of such agency, affiliation, alter-ego relationship
5 and/or employment; and actively participated in or subsequently ratified and
6 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
7 all the facts and circumstances, including, but not limited to, full knowledge of each
8 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
9 caused thereby.

10 **CLAIMS RELATED TO PLAINTIFF'S PHOTOGRAPHS**

11 8. AIRBNB's Platform is an online marketplace for lodging, primarily
12 homestays for vacation rentals, and tourism activities. After registering on the
13 Platform, users can post and offer their homes and properties for temporary rental
14 and/or search for properties to rent short term. Unregistered users can view publicly
15 available listings of properties.

16 9. AIRBNB primarily earns revenue by taking a percentage of transactions
17 that occur on its Platform. AIRBNB therefore promote and encourage as much
18 engagement on the Platform as possible, including allowing users to promote their
19 property listings with user generated and posted content. AIRBNB then places the
20 content uploaded by users in the places on the AIRBNB Platform that AIRBNB
21 determines are optimal to maximize chances of generating a transaction between a
22 user offering a property rental and a user searching for such a rental. AIRBNB
23 assesses many aspects of a post to optimize searches for consumers as well,
24 including, the listings photos.

25 10. This lawsuit concerns, in part, AIRBNB's direct and pervasive
26 participation in infringing the copyrights in Plaintiff's Subject Photographs (defined
27 below) by exercising control over unauthorized copies of the Subject Photographs
28 (collectively, the "Infringing Uses") on AIRBNB's Platform; selecting the Infringing

1 Uses for upload, download, transmission, and/or storage to/from AIRBNB's
2 Platform and servers; and/or instigating the copying, display, publication,
3 reproduction, and/or distribution of the Infringing Uses on AIRBNB's Platform.

4 11. Specifically, upon information and belief, Plaintiff alleges that AIRBNB
5 stores, caches, and distributes multiple copies of photographs on its servers and
6 Platform, irrespective of any user command to do so.

7 12. Plaintiff, HENRY, is an acclaimed photographer who created and owns
8 the original photographs depicted in **Exhibit A** attached hereto ("Subject
9 Photographs.")

10 13. Plaintiff has registered the Subject Photographs and was granted U.S.
11 copyright registrations as set forth in **Exhibit A** attached hereto.

12 14. Prior to the acts complained of herein, Plaintiff published and widely
13 publicly displayed and disseminated the Subject Photographs including without
14 limitation on Plaintiff's website *www.bentonhenry.com* or his client's website
15 *https://www.myrtle-beach-resort.com/*.

16 15. Plaintiff is informed and believes and thereon alleges that following its
17 publication and display of the Subject Photographs, AIRBNB, DOE Defendants, and
18 each of them used the Subject Photographs without Plaintiff's authorization for
19 commercial purposes in various ways, including, but not limited to, the use on the
20 website *airbnb.com*.

21 16. Following Plaintiff's dissemination and display of the Subject
22 Photographs, Defendants, and each of them copied, reproduced, displayed,
23 distributed, created derivative works, and/or otherwise used the Subject Photographs
24 without license, authorization, or consent, including by using the Subject
25 Photographs on their website ("Infringing Uses") which were created, published, and
26 distributed by Airbnb. The Infringing Use was made widely and publicly available at
27 *airbnb.com*, which is owned and operated by Airbnb. True and correct screen
28 captures of the Infringing Uses are included in **Exhibit A** attached hereto.

1 Plaintiff's rights in the Subject Photographs. As such, Plaintiff is entitled to
2 disgorgement of Defendants' profits directly and indirectly attributable to
3 Defendants' infringement of Plaintiff's rights in the Subject Photographs in an
4 amount to be established at trial.

5 25. On information and belief, Plaintiff alleges that Defendants, and each of
6 them, have committed acts of copyright infringement, as alleged above, which were
7 willful, intentional and malicious, which further subjects Defendants, and each of
8 them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act
9 in the sum of up to \$150,000.00 per infringement and/or a preclusion from asserting
10 certain equitable and other defenses.

11 **SECOND CLAIM FOR RELIEF**

12 **(For Vicarious and/or Contributory Copyright Infringement – Against all**
13 **Defendants, and Each)**

14 26. Plaintiff repeats, re-alleges, and incorporates herein by reference as
15 though fully set forth, the allegations contained in the preceding paragraphs of this
16 Complaint.

17 27. On information and belief, Plaintiff alleges that Defendants knowingly
18 induced, participated in, aided and abetted in and profited from the illegal
19 reproduction and distribution of the Subject Photographs as alleged hereinabove.
20 Such conduct included, without limitation, publishing photographs obtained from
21 third parties that Defendants knew, or should have known, were not authorized to be
22 published by Defendants.

23 28. On information and belief, Plaintiff alleges that Defendants, and each of
24 them, are vicariously liable for the infringement alleged herein because they had the
25 right and ability to supervise the infringing conduct and because they had a direct
26 financial interest in the infringing conduct. Specifically, Defendants, and each of
27 them, profited in connection with the Infringing Use, and were able to supervise the
28 distribution, broadcast, and publication of the Infringing Use.

1 29. By reason of the Defendants', and each of their, acts of contributory and
2 vicarious infringement as alleged above, Plaintiff has suffered general and special
3 damages in an amount to be established at trial.

4 30. Due to Defendants' acts of copyright infringement as alleged herein,
5 Defendants, and each of them, have obtained direct and indirect profits they would
6 not otherwise have realized but for their infringement of Plaintiff's rights in the
7 Subject Photographs. As such, Plaintiff is entitled to disgorgement of Defendants'
8 profits directly and indirectly attributable to Defendants' infringement of Plaintiff's
9 rights in the Subject Photographs, in an amount to be established at trial.

10 31. On information and belief, Plaintiff alleges that Defendants, and each of
11 them, have committed acts of copyright infringement, as alleged above, which were
12 willful, intentional and malicious, which further subjects Defendants, and each of
13 them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act
14 in the sum of up to \$150,000.00 per infringement and/or a preclusion from asserting
15 certain equitable and other defenses.

16 **THIRD CLAIM FOR RELIEF**

17 **(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –**
18 **Against all Defendants, and Each)**

19 32. Plaintiff repeats, re-alleges, and incorporates herein by reference as
20 though fully set forth, the allegations contained in the preceding paragraphs of this
21 Complaint.

22 33. Plaintiff regularly published the Subject Photographs with copyright
23 management information ("CMI"), as that phrase is used in 17 USC § 1202.
24 Plaintiff's CMI included, without limitation, his name, company name, copyright
25 notice, metadata, and other identifying information. The CMI was prominently
26 displayed and would be viewed by visitors to Plaintiff's website and online profiles.

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1 34. On information and belief, Plaintiff alleges that Defendants, and each of
2 them, intentionally removed and altered Plaintiff's violated 17 U.S.C. §1202(b)
3 before copying, reproducing, distributing, and displaying the Subject Photographs.

4 35. On information and belief, Plaintiff alleges that Defendants, and each of
5 them, did distribute or import for distribution copyright management information
6 knowing that the CMI has been removed or altered without authority of Plaintiff or
7 the law.

8 36. On information and belief, Plaintiff alleges that Defendants, and each of
9 them, did distribute and publicly display works and copies of works knowing that
10 copyright management information has been removed or altered without authority of
11 Plaintiff or the law, knowing, or, with respect to civil remedies under 17 USC §
12 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or
13 conceal an infringement of any right under this title.

14 37. On information and belief, Plaintiff alleges that Defendants, and each of
15 them, in violation of 17 § USC 1202(a), knowingly and with the intent to induce,
16 enable, facilitate, or conceal infringement provided false copyright management
17 information when they added their own logos, names, bylines, and attribution to the
18 Subject Photographs.

19 38. On information and belief, Plaintiff alleges that Defendants, and each of
20 them knew, that they were providing false copyright management information to its
21 copies of the Subject Photographs and distributing copyright management
22 information that was false at the time it distributed its unauthorized copies of the
23 Subject Photographs.

24 39. The above conduct is in violation of the Digital Millennium Copyright
25 Act and exposes Defendants, and each of them, to additional and enhanced common
26 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203
27 and other applicable law.

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1 40. On information and belief, Plaintiff alleges that Defendants, and each of
2 their, conduct as alleged herein was willful, reckless, and/or with knowledge, and
3 Plaintiff resultantly seeks enhanced damage and penalties.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment as follows:

6 **Against all Defendants, and Each with Respect to Each Claim for Relief:**

- 7 a. That Defendants, and each of them, as well as their employees, agents,
8 or anyone acting in concert with them, be enjoined from infringing
9 Plaintiff's copyrights in the Subject Photographs, including without
10 limitation an order requiring Defendants, and each of them, to remove
11 any content incorporating, in whole or in part, the Subject Photographs
12 from any print, web, or other publication owned, operated, or controlled
13 by any Defendant.
- 14 b. That Plaintiff be awarded all profits of Defendants, and each of them,
15 plus all losses of Plaintiff, plus any other monetary advantage gained by
16 the Defendants, and each of them, through their infringement, the exact
17 sum to be proven at the time of trial, and, to the extent available,
18 statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C.
19 §1203, and other applicable law.
- 20 c. That a constructive trust be entered over any revenues or other proceeds
21 realized by Defendants, and each of them, through their infringement of
22 Plaintiff's intellectual property rights;
- 23 d. That Plaintiff be awarded his attorneys' fees as available under the
24 Copyright Act U.S.C. § 505 et seq.;
- 25 e. That Plaintiff be awarded his costs and fees under the above statutes;
- 26 f. That Plaintiff be awarded statutory and enhanced damages under the
27 statutes set forth above;
- 28 g. That Plaintiff be awarded pre-judgment interest as allowed by law;

1 h. That Plaintiff be awarded the costs of this action; and

2 i. That Plaintiff be awarded such further legal and equitable relief as the
3 Court deems proper.

4 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
5 38 and the 7th Amendment to the United States Constitution.

6
7 Respectfully submitted,

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9 Dated: April 20, 2023

DONIGER / BURROUGHS

10 By: /s/ Scott Alan Burroughs
11 Scott Alan Burroughs, Esq.
12 Frank R. Trechsel, Esq.
13 *Attorneys for Plaintiff*
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